

No. 11628

United States
Circuit Court of Appeals
For the Ninth Circuit.

EDWARD MILLER,

Appellant,

vs.

BANK OF AMERICA, N. T. & S. A., UNITED
STATES OF AMERICA and GEORGE C.
WELDEN, an individual doing business as
Wholesalers Adjustment Bureau of San Fran-
cisco,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

BERNAL & BERNAL,
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Attorneys for Appellant.

THOS. J. RIORDAN and
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San Francisco 4, Calif.

FRANK J. HENNESSY,
United States Attorney.

WILLIAM E. LICKING,
Assistant United States Attorney.

EDWARD N. JACKSON and
JACK A. SEAMAN,
Central Tower Bldg.,
San Francisco 3, Calif.
Attorneys for Appellees.

In the Southern Division of the United States District Court for the Northern District of California

No. 23664-G

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a National Banking Association,

Plaintiff,

vs.

UNITED STATES OF AMERICA; GEORGE C. WELDEN, individually and doing business under the firm name and style of WHOLESALERS ADJUSTMENT BUREAU OF SAN FRANCISCO; LYLE B. EVERETT and JOSEPH L. McEACHERN, individually and as copartners doing business under the firm name and style of EVERETT and McEACHERN LUMBER COMPANY; and EDWARD MILLER,

Defendants.

STIPULATION OF FACTS

It Is Hereby Stipulated by and between the parties hereto that the following facts are true and may be considered by the Court as in evidence in the trial of the above case:

This is an action in interpleader brought by the plaintiff against conflicting claimants to a fund in the amount of \$3.99.59, originally on deposit in the Healdsburg Branch of the plaintiff corporation

located at Healdsburg, Sonoma County, California, to the credit of the defendant Lyle B. Everett. This amount was by the plaintiff on the 7th day of September, 1944, pursuant to an order of the above entitled Court deposited by the plaintiff with the clerk of said Court to abide the result of this action.

The default of the defendants Lyle B. Everett and Joseph L. McEachern was granted on October 15, 1945, on the motion of plaintiff, no answer having been filed by said defendants or either of them. The other defendants have answered and the nature of their claims is set out in the pleadings on file herein.

The plaintiff has filed a Motion for an Interlocutory Decree of Dismissal and has been dismissed from the action. There is still pending before the Court plaintiff's motion for order allowing attorney's fees and costs. This is supported by an affidavit on file herein. No affidavits in opposition are on file.

The claim of the defendant George C. Welden, doing business under the firm name and style of Wholesalers Adjustment Bureau of San Francisco, is based upon the following facts: On November 22, 1943, a writ of attachment dated November 19, 1943, was served upon the plaintiff bank. This writ of attachment issued out of action Number 323811 in the Superior Court of the State of California in and for the City and County of San Francisco, entitled Wholesalers Adjustment Bureau of San Francisco versus Lyle B. Everett, et al, seeking a recovery of \$2985.30. On April 20, 1944, judgment

in the sum of \$2052.58 was entered by Stipulation between the parties in said action. On April 21, 1944, the above judgment was recorded in Volume 602, p. 419 of the official records of the City and County of San Francisco. On April 25, 1944, a writ of execution issuing under said judgment in the amount of \$2078.36 was served upon plaintiff bank.

The claim of the defendant Edward Miller to the fund on deposit arises out of the following facts: Edward Miller instituted an action against the Everett and McEachern Lumber Company which was a copartnership composed of the defendants Lyle B. Everett and Joseph L. McEachern. This action in the Superior Court of the State of California in and for the County of Mendocino is entitled Edwin Miller versus Everett and McEachern Lumber Company, et al., Number 14279. On January 4, 1944, a writ of attachment issuing out of said action in the amount of \$8212.52 was served upon the plaintiff bank. On March 11, 1944, judgment by default was entered in said action in favor of plaintiff in the amount of \$5052.43, attorneys fees at 15% of amount received, interest from date of judgment at 7% and costs in the amount of \$149.75, and that said judgment was regularly entered March 11, 1944, in Book 21, page 269 of Judgments in the office of the County Clerk of Mendocino County, California.

The claim of the United States is based upon the following facts: There is due to the United States from defendants Lyle B. Everett and Joseph L. Mc-

Eachern \$2520.75 for Withholding Tax, and additional penalties and interest thereon as provided by law, duly assessed by the United States Commissioner of Internal Revenue on March 25, 1944; the Commissioner's assessment list of said tax was received by the United States Collector of Internal Revenue for the First Collection District of California on March 27, 1944; Notice and Demand for payment (T. D. form #17) was made on tax payers on April 3, 1944; warrant for distraint (T. D. form #69) issued by said Collector on April 3, 1944, and on April 21, 1944, at 11 minutes past 11:00 o'clock A.M. Notice of Tax Lien (T. D. form #668) for said taxes with additional interest and penalties thereon in the total amount of \$2620.51 was filed of record with the County Recorder of Sonoma County, California. There is due to the United States from defendants Lyle B. Everett and Joseph L. McEachern \$629.85 for Social Security tax and additional penalties and interest thereon, duly assessed by the United States Commissioner of Internal Revenue on April 11, 1944; the Commissioner's assessment list of said tax was received by the United States Collector of Internal Revenue for the First Collection District of California on April 14, 1944; Notice and demand for payment (T. S. form #17) was made on taxpayers April 17, 1944, and on April 21, 1944, at 10 minutes past 11:00 o'clock A.M. A Notice of Tax Lien for said taxes with additional penalties and interest thereon in the total amount of \$661.34 was filed of record with the County Recorder of Sonoma County, California. The total

amount due the United States from said taxpayers on account of said taxes assessed and noticed as aforesaid is \$3281.95, together with interest thereon from April 21, 1944, as provided by law. No part of said sum has been paid and the whole thereof remains due, owing and unpaid to the United States.

On April 21, 1944, a Notice of Levy of said taxes was served on the plaintiff bank at its Healdsburg Branch, at Healdsburg, California.

Dated: This 3rd day of May, 1946.

Respectfully submitted,

THOS. J. RIORDAN &

EUGENE H. O'DONNELL,

Attorneys for Bank of America National Trust and
Savings Association, Plaintiff.

EDWARD N. JACKSON,

Attorney for Defendant, Wholesalers Adjustment
Bureau.

JOSEPH W. BERNAL,

Attorney for Defendant,
Edward Miller.

FRANK J. HENNESSY,

United States Attorney.

WILLIAM E. LICKING,

Assistant United States
Attorney.

Attorneys for Defendant, United States of America.

[Endorsed]: Filed May 3, 1946.

[Title of District Court and Cause.]

AMENDED STIPULATION OF FACTS

It Is Hereby Stipulated by and between the parties hereto that the Stipulation of Facts heretofore filed in the above entitled matter may be, and is hereby, amended to read on page 2 thereof, commencing on line 28 of said page, as follows:

“On April 20, 1944, the Court rendered judgment in the sum of \$2052.58, which was entered in the minutes of the Court on said date by Stipulation between the parties in said action. On April 21, 1944, the above judgment was entered and recorded in Volume 602, p. 419 of the Judgment Book of said Court, in and for the City and County of San Francisco.”

And It Is Stipulated that the following sentences, commencing on line 28 of page 2 of said Stipulation of Facts, and continuing to the end of the sentence on line 32 of page 2, may be stricken from the Stipulation now on file:

“On April 20, 1944, judgment in the sum of \$2052.58 was entered by Stipulation between the parties in said action. On April 21, 1944, the above judgment was recorded in Volume 602, p. 419 of the official records of the City and County of San Francisco.”

It Is Hereby Further Stipulated and Agreed that each party may have to and including July 29,

1946, within which to file reply briefs to the opening briefs of the parties heretofore submitted.

/s/ THOS. J. RIORDAN,

/s/ EUGENE R. O'DONNELL,

Attorneys for Bank of America National Trust and Savings Association, Plaintiff.

/s/ EDWARD N. JACKSON,

Attorney for Defendant, Wholesalers Adjustment Bureau.

/s/ JOSEPH W. BERNAL,

Attorney for Defendant,

Edward Miller.

/s/ WILLIAM E. LICKING,

Assistant United States

Attorney.

Attorneys for Defendant, United States of America.

[Endorsed]: Filed July 26, 1946.

[Title of District Court and Cause.]

MEMORANDUM DECISION

It appears from the stipulation of facts that the tax claim of the United States became a recorded lien by the filing of notice of lien (26 USCA 3672) prior to the effectuation as liens of the judgments of the creditor defendants. Hence the tax lien of the United States was superior to the judgment claims of defendants. *Underwood v. U. S. Cir.* 5, 118 Fed. 2d 760; *Mackenzie v. U. S. Cir.* 9, 109 Fed. 2d 540; *U. S. v. Record Pub. Co.*, 60 Fed. Supp. 194.

Upon findings to be presented, the funds on deposit will be ordered paid to the United States less costs of plaintiff and attorneys fees in the sum of \$200.00. (Mass. Mutual Life Ins. Co. v. Morris, Cir. 9, 61 Fed. 2d 104; Globe Indemnity Co. v. Puget Sound Co., Inc., 154 Fed. 2d 249.)

Dated: September 17, 1946.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed Sept. 17, 1947.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled case came on regularly for trial before the Court, sitting without a jury, at San Francisco, on the 15th day of July, 1946, the Honorable Louis E. Goodman, presiding; the plaintiff appeared by Thomas J. Riordan and Eugene H. O'Donnell, its attorneys, the defendant United States of America, appeared by Frank J. Hennessy, United States Attorney for the Northern District of California, and William E. Licking, Assistant United States Attorney for said District, the defendant George C. Welden appeared by Edward N. Jackson, his attorney, and the defendant Edward Miller appeared by Joseph W. Bernal, his attorney; the defendants, Lyle B. Everett and Joseph L. Mc-

Eachern, did not appear and their default had been previously entered; whereupon evidence, in the form of a written Stipulation of Facts, was introduced and the parties and the Court having considered the evidence makes the following findings of fact:

FINDINGS OF FACT

I.

This is an action of interpleader brought by the plaintiff against conflicting claimants to a fund in the amount of \$3199.59, originally on deposit in the Healdsburg Branch of the plaintiff corporation located at Healdsburg, Sonoma County, California, to the credit of the defendant, Lyle B. Everett. On the 7th day of September, 1944, said amount was, by the Order of this Court deposited with the Clerk of said Court to abide the result of this action.

II.

The default of the defendants, Lyle B. Everett and Joseph L. McEachern, was granted on October 15, 1945, on the motion of the plaintiff, no Answer or other pleading having been filed by said defendants, or either of them. All other defendants answered. The plaintiff filed a motion for an Interlocutory Decree of Dismissal and has been dismissed from the action. Plaintiff's motion for an order allowing its attorneys' fees and costs was, at the time of submission, still pending before the Court. Said motion is supported by an Affidavit on file herein and no Affidavits in opposition are on file.

III.

The claim of the defendant George C. Welden, doing business under the firm name and style of Wholesalers Adjustment Bureau of San Francisco, to the fund in question, is based upon the following facts: On November 22, 1943, a writ of attachment dated November 19, 1943, was served upon the plaintiff bank. This writ of attachment issued out of action Number 323811 in the Superior Court of the State of California in and for the City and County of San Francisco, entitled Wholesalers Adjustment Bureau of San Francisco versus Lyle B. Everett et al, seeking a recovery of \$2985.30. On April 20, 1944, the Court rendered judgment in the sum of \$2052.58 which was entered in the minutes of the Court on said date by Stipulation between the parties in said action. On April 21, 1944, the above judgment was entered and recorded in Volume 602, p. 419 of the judgment book of said Court, in and for the City and County of San Francisco. On April 25, 1944, a writ of execution issuing under said judgment in the amount of \$2078.36 was served upon plaintiff bank.

IV.

The claim of the defendant Edward Miller to the fund on deposit arises out of the following facts: Edward Miller instituted an action against the Everett and McEachern Lumber Company which was a copartnership composed of the defendants Lyle B. Everett and Joseph L. McEachern. This action in the Superior Court of the State of California

in and for the County of Mendocino is entitled Edwin Miller versus Everett and McEachern Lumber Company, et al, Number 14279. On January 5, 1944, a writ of attachment issuing out of said action in the amount of \$8212.52 was served upon the plaintiff bank. On March 11, 1944, judgment by default was entered in said action in favor of plaintiff in the amount of \$5052.43, attorneys fees at 15% of amount received, interest from date of judgment at 7% and costs in the amount of \$149.75, and that said judgment was regularly entered March 11, 1944, in Book 21, page 269 of Judgments in the office of the County Clerk of Mendocino County, California.

V.

The claim of the United States is based upon the following facts: There is due to the United States from defendants Lyle B. Everett and Joseph L. McEachern \$2520.75 for Withholding Tax, and additional penalties and interest thereon as provided by law, duly assessed by the United States Commissioner of Internal Revenue on March 25, 1944; the Commissioner's assessment list of said tax was received by the United States Collector of Internal Revenue for the First Collection District of California on March 27, 1944; Notice and Demand for payment was made on taxpayers on April 3, 1944; warrant for distraint issued by said Collector on April 3, 1944, and on April 21, 1944, at 11 minutes past 11:00 o'clock A.M., Notice of Tax Lien for said taxes with additional interest and penalties thereon

in the total amount of \$2620.51 was filed of record with the County Recorder of Sonoma County, California.

There is due to the United States from defendants Lyle B. Everett and Joseph L. McEachern \$629.85 for Social Security tax and additional penalties and interest thereon, duly assessed by the United States Commissioner of Internal Revenue on April 11, 1944; the Commissioner's list of said tax was received by the United States Collector of Internal Revenue for the First Collection District of California on April 14, 1944; Notice and Demand for payment was made on taxpayers April 17, 1944, and on April 21, 1944, at 10 minutes past 11:00 o'clock A.M. a Notice of Tax Lien for said taxes with additional penalties and interest thereon in the amount of \$661.34 was filed of record with the County Recorder of Sonoma County, California. The total amount due the United States from said taxpayers on account of said taxes assessed and noticed as aforesaid is \$3281.95 together with interest thereon from April 21, 1944, as provided by law. No part of said sum has been paid and the whole thereof remains due, owing and unpaid to the United States.

VI.

On April 21, 1944, the Collector of Internal Revenue for the First Collection District of California served a Notice of Levy for said taxes upon the plaintiff bank at its Healdsburg Branch, in Healdsburg, Sonoma County, California.

VII.

That the reasonable value of attorneys fees incurred by the plaintiff in this action amount to the sum of \$200.00.

From the foregoing findings of fact the Court draws the following Conclusions of Law:

I.

That the defendants, Lyle B. Everett and Joseph L. McEachern are now and at all times since the 25th day of March, 1944, have been indebted to the defendant, United States of America, in the sum of \$2520.70, with interest and penalties as provided by law, for Withholding Taxes assessed against them.

II.

That the defendants, Lyle B. Everett and Joseph L. McEachern, are now and at all times since the 11th day of April, 1944, have been indebted to the defendant, United States of America, in the sum of \$629.85, with interest and penalties as provided by law, for Social Security Taxes assessed against them.

III.

That the defendants, Lyle B. Everett and Joseph L. McEachern, are now and at all times since the 21st day of April, 1944, have been indebted to the defendant, United States of America, in the total amount of \$3281.95, together with interest from that date as provided by law.

IV.

That a lien in favor of the United States arose on the 27th day of March, 1944, when the Collector of Internal Revenue for the First Collection District of California received the Commissioner of Internal Revenue's Assessment List of March 25, 1944, carrying an assessment of \$2520.75 for Withholding Tax with additional penalties and interest, against the defendants Lyle B. Everett and Joseph L. McEachern, which lien attached to all of the property and rights to property, whether real or personal, belonging to said defendants Lyle B. Everett and Joseph L. McEachern and particularly to the sum of \$3199.59 then belonging to said Lyle B. Everett and on deposit to his credit in the Healdsburg Branch of the plaintiff corporation at Healdsburg, in Sonoma County, California, and now on deposit with the Clerk of this Court to abide the result of this action.

V.

That a lien in favor of the United States arose on the 14th day of April, 1944, when the Collector of Internal Revenue for the First Collection District of California received the Commissioner of Internal Revenue's Assessment List of April 11, 1944, carrying an assessment of \$629.85 for Social Security tax, and additional penalties and interests against the defendants Lyle B. Everett and Joseph L. McEachern, which lien attached to all of the property and rights to property, whether real or personal, belonging to said defendants, Lyle B. Ev-

erett and Joseph L. McEachern and particularly to the sum of \$3199.59 then belonging to said Lyle B. Everett and on deposit to his credit in the Healdsburg Branch of the plaintiff corporation at Healdsburg, in Sonoma County, State of California, and now on deposit with the Clerk of this Court to abide the result of this action.

VI.

That on the 21st day of April, 1944, said liens upon said sum of \$3199.59 were rendered valid as to all persons when the Collector of Internal Revenue filed notices thereof in the office of the County Recorder of Sonoma County, California, and served notice of levy thereon upon plaintiff bank at its Healdsburg Branch, in Healdsburg, Sonoma County, California.

VII.

That the defendants, Lyle B. Everett and Joseph L. McEachern, have also been indebted to the defendant George C. Welden in the sum of \$2052.58 at all times since April 20, 1944, because of a judgment obtained against them on said day by said George C. Welden in the Superior Court of the State of California in and for the City and County of San Francisco, but that neither said indebtedness nor the judgment obtained thereon constituted as of April 21, 1944, the date upon which the United States perfected its liens by recording notice thereof, a lien upon the sum of \$3199.59 then belonging to said Lyle B. Everett and on deposit to his credit

in the Healdsburg Branch of the plaintiff corporation at Healdsburg in Sonoma County, State of California, and now on deposit with the Clerk of this Court to abide the result of this action.

VIII.

That the defendants, Lyle B. Everett and Joseph L. McEachern have also been indebted to the defendant, Edward Miller, in the sum of \$5052.43, plus attorney's fees, interest and costs, at all times since the 11th day of March, 1944, because of a default judgment entered against them and in favor of the defendant, Edward Miller, on said day in the Superior Court of the State of California, in and for the County of Mendocino but that neither said indebtedness nor the judgment obtained thereon constituted, as of April 21, 1944, the date upon which the United States perfected its liens, by recording notices thereof, a lien upon the sum of \$3199.59 then belonging to said Lyle B. Everett and on deposit to his credit in the Healdsburg Branch of the plaintiff corporation at Healdsburg, in Sonoma County, State of California, and now on deposit with the Clerk of this Court to abide the result of this action.

IX.

That the tax liens of the United States are superior to the rights, claims and liens of each and all of the creditor defendants in and to the fund of \$3199.59 on deposit with the Clerk because recorded in Sonoma County, California, prior to the effec-

tuation of any judgment liens in said County by any of said defendants.

X.

That the sum of \$3199.59 belonging to the defendant, Lyle B. Everett, and previously on deposit to his credit in the Healdsburg Branch of the plaintiff corporation at Healdsburg in Sonoma County, State of California, and now on deposit with the Clerk of this Court should be distributed as follows:

1. The sum of \$200.00 to the plaintiff, Bank of America National Trust and Savings Association for attorneys fees incurred by it in this action, plus its costs to be taxed;
2. The remainder to the United States of America to be applied upon the Withholding and Social Security taxes due it from the defendants, Lyle B. Everett and Joseph L. McEachern, the payment of which is secured to it by the tax liens of which notices were filed in the office of the County Recorder of Sonoma County, California, on the 21st day of April, 1944.

XI.

That a Decree should be entered in accordance with the foregoing Conclusions of Law.

Dated: This 7th day of February, 1947.

LOUIS E. GOODMAN,
United States District Judge.

Approved as to Form:

.....

Attorneys for Plaintiff.

.....

Attorney for George C.
Welden.

.....

Attorney for Edward Miller.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ WILLIAM E. LICKING,
Asst. United States Attorney.

Attorneys for Defendant, United States of America.

[Endorsed]: Filed Feb. 10, 1947.

In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia

No. 23664-G

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION, a National Bank-
ing Association,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,
Defendants.

DECREE

The above entitled case came on regularly for trial
before the Court sitting without a jury at San Fran-
cisco, California, on the 15th day of July, 1946, the

Honorable Louis E. Goodman presiding. The plaintiff appeared by Thomas J. Riordan and Eugene H. O'Donnell, its attorneys. The defendant United States of America, appeared by Frank J. Hennessy, United States Attorney for the Northern District of California, and William E. Licking, Assistant United States Attorney for said District. The defendant George C. Welden appeared by Edward N. Jackson, his attorney; the defendant Edward Miller, appeared by Joseph W. Bernal, his attorney. The defendants, Lyle B. Everett and Joseph L. McEachern, did not appear, their default having been previously entered.

Evidence in the form of a Stipulation of Facts was introduced and the case thereafter submitted for decision upon Briefs filed on behalf of the parties appearing.

The Court has considered the evidence and the Briefs presented by the parties, and has made and entered its Findings of Fact and Conclusions of Law herein.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the plaintiff Bank of America National Trust and Savings Association receive from the sum of \$3,199.59 now on deposit with the Clerk of this Court the sum of \$200.00 for attorneys fees and its costs herein to be taxed;

2. That the defendant United States of America receive the remainder of the said sum of \$3,199.59, the same to be paid by the Clerk of this Court to the Collector of Internal Revenue to be ap-

plied upon the Withholding and Social Security tax due from the defendants, Lyle B. Everett and Joseph L. McEachern, to the United States of America.

Dated: April 2, 1947.

LOUIS E. GOODMAN,
United States District Judge.

Approved as to form as required by Rule 5(d):

FRANK J. HENNESSY,
United States Attorney.
WILLIAM E. LICKING,
Asst. United States Attorney,
Attorneys for the United
States of America.

RIORDAN & O'DONNELL,
Attorneys for Plaintiff.

EDWARD N. JACKSON,
Attorney for George C.
Welden.

JOSEPH W. BERNAL,
Attorney for Edward Miller.

[Endorsed]: Filed Apr. 3, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the defendant, Edward Miller, a married man, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit,

from the Final Judgment in the above entitled action, which was entered April 3rd, 1947.

BERNAL & BERNAL.

By JOSEPH W. BERNAL,
Attorney for Defendant,
Edward Miller.

[Endorsed]: Filed May 5, 1947.

[Title of District Court and Cause.]

STATEMENTS OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON
THE APPEAL

1. That the District Court erred in entering the Final Judgment in favor of the Bank of America, National Trust and Savings Association, in the amount of Two Hundred Dollars (\$200.00) for attorneys' fees.

2. That the Court erred in entering a Final Judgment in favor of the United States of America, for the balance of the sum of Three Thousand One Hundred Ninety-nine and 59/100ths Dollars (\$3,199.59), in the hands of the Clerk, for the benefit of the Collector of Internal Revenue, to be applied upon the Withholding and Social Security Taxes due from defendants Lyle B. Everett and Joseph L. McEachern, in that:

(a) The judgment in Edward Miller vs. Everett and McEachern, in the Superior Court of

Mendocino County, State of California, was entered prior to April 21st, 1944, the date on which the United States Collector of Internal Revenue caused to be filed, a Notice of Tax Lien, with the County Recorder of Sonoma County, California.

(b) That there were no other judgments entered of record against Everett and McEachern, prior to the Notice of Tax Lien filed by the Collector of Internal Revenue on April 21st, 1944, with the County Recorder of Sonoma County.

BERNAL & BERNAL.

By JOSEPH M. BERNAL,

Attorney for Defendant

Edward Miller.

[Endorsed]: Filed May 5, 1947.

[Title of District Court and Cause.]

BOND FOR STAY OF EXECUTION
AND COST ON APPEAL

Know All Men By These Presents, That we, Edward Miller, as Principal, and the American Employers' Insurance Company, a Corporation, organized under the laws of the Commonwealth of Massachusetts, with its principal place of business in the City of Boston, in said Commonwealth, as Surety, are held and firmly bound unto the United States

of America in the sum of Five Hundred and No/100ths (\$500.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, the said Edward Miller binds himself, his heirs, executors and administrators and the said American Employers' Insurance Company binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Signed, Sealed and Dated this 25th day of April, 1947.

Whereas, on the 3rd day of April, 1947, in an action depending in the United States District Court for the Northern District of California, Southern Division, between the Bank of America N. T. & S. A., a National Bank Association, and defendant Edward Miller and other defendants, a final judgment was entered and the said Edward Miller has filed a notice of appeal from such final judgment to the United States Circuit Court of Appeals for the Ninth Circuit.

Now, the condition of this obligation is such that if the said Edward Miller shall prosecute his appeal to effect and shall pay all costs of the action, costs on appeal and interest at the legal rate, which shall be compensation for the use and detention of the property and damages for delay, if the appeal is dismissed or the final judgment is affirmed or such costs as the said Circuit Court of Appeal may award against the said Edward Miller if the final judgment is modified or in any other event then this obligation is to be void, otherwise to remain in full force and effect.

It is further stipulated as a part of the foregoing bond that in case of the breach of any condition thereof, the above named District Court may, upon notice of not less than ten days to the surety above named proceed summarily in the action or suit in which the same was given to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefore against said surety and award execution therefore.

Signed and Sealed in the Presence of

.....
.....

Principal
AMERICAN EMPLOYERS'
INSURANCE COMPANY

/s/ By JOHN A. VIOLICH,
Attorney-in-Fact.

The Premium for this Bond is \$10.00 per annum.

State of California,
City and County of San Francisco—ss.

On This 25th day of April, A.D. 1947, before me, Sam M. Markowitz, a Notary Public in and for said County and State, personally appeared John A. Violich, known to me to be the person whose name is subscribed to the within Instrument, as the Attorney-in-fact of American Employers' Insurance Company, and acknowledged to me that he subscribed the name of American Employers' Insurance Company thereto as principal and his own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] SAM M. MARKOWITZ,
Notary Public in and for Said
County and State.

Acknowledgment—Attorney-in-Fact.

A15446.

[Endorsed]: Filed May 5, 1947.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD

Comes now Edward Miller, a married man, appellant herein, pursuant to Rule 75, Federal Rules of Civil Procedure, and designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in the above cause:

1. Complaint for interpleader and declaratory relief filed September 7th, 1944.
2. Answer of defendant Edward E. Miller, filed November 18th, 1944.
3. Answer of defendant Wholesalers Adjustment Bureau of San Francisco, filed December 8th, 1944.
4. Answer of U.S.A. filed January 4, 1945.
5. Answer of defendant Edward Miller to cross-complaint of Wholesalers Adjustment Bureau of San Francisco, filed February 9th, 1945.

6. Stipulation of Facts filed May 3rd, 1946.
7. Amended Stipulation of Facts, filed July 26, 1946.
8. Memorandum Decision, filed September 17, 1946.
9. Findings of Fact and Conclusions of Law, filed February 7th, 1947.
10. Final Judgment entered of record April 3, 1947.
11. Notice of Appeal.
12. Bond for costs on appeal.
13. Statement of points upon which appellant intends to rely upon appeal.
14. Designation of contents of record on appeal.

BERNAL & BERNAL.

By JOSEPH W. BERNAL,

Attorneys for Defendant,

Edward Miller.

[Endorsed]: Filed May 5, 1947.

District Court of the United States

Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 49, inclusive, contain a full, true, and correct transcript of the records and

proceedings in the cause of Bank of America N. T. S. A. vs. United States, Wholesalers Adjustment Bureau of S. F., et al., No. 23664-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$9.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 12th day of May, A.D. 1947.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ By E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 11628. United States Circuit Court of Appeals for the Ninth Circuit. Edward Miller, Appellant, vs. Bank of America, N. T. & S. A., United States of America, and George C. Welden, an individual doing business as Wholesalers Adjustment Bureau of San Francisco, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed May 12, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11628

EDWARD MILLER,

Appellant,

vs.

BANK OF AMERICA, et al.,

Respondents.

STIPULATION TO AMEND DESIGNATION
OF CONTENTS OF RECORD

It is hereby stipulated by and between the respective parties hereto that the following items may be excluded from the contents of the record on appeal, in the above entitled matter:

1. Complaint for interpleader and declaratory relief filed September 7th, 1944.

2. Answer of defendant Edward E. Miller, filed November 18th, 1944.

3. Answer of defendant Wholesalers Adjustment Bureau of San Francisco, filed December 8th, 1944.

4. Answer of U.S.A. filed January 4, 1945.

5. Answer of defendant Edward Miller to cross-complaint of Wholesalers Adjustment Bureau of San Francisco, filed February 9th, 1945.

It is agreed that this Stipulation may be a part of the contents of the record on appeal.

It is further agreed that, if the Court determines

that attorneys' fees were allowable, no opposition will be made to the reasonableness of the attorneys' fees allowed to respondent Bank of America in the Court below.

Dated: May 29th, 1947.

BERNAL & BERNAL.

/s/ By JOSEPH W. BERNAL,
Attorneys for Appellant,
Edward Miller.

/s/ EUGENE H. O'DONNELL,
Attorney for Respondent, Bank of America Na-
tional Trust and Savings Association.

/s/ WILLIAM E. LICKING,
Assistant United States Attorney, Attorney for Re-
spondent, United States of America.

(Signed by Joseph W. Bernal on authority of
William E. Licking.)

[Endorsed]: Filed June 2, 1947.